

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

KATHRYN ANNE HITZIG,

Plaintiff,

v.

MATTHEW B. HUBBARD and  
JEFF HUDON,

Defendants.

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File No. 1:08-cv-102-jgm

OPINION AND ORDER  
(Doc. 78)

Pro se plaintiff Kathryn Hitzig commenced this action in May 2008, claiming that she was illegally interrogated and denied appropriate medical care after being injured in a car accident. Defendants Matthew Hubbard and Jeff Hudon were Windham County Deputy Sheriffs at the time of the accident.<sup>1</sup> Pending before the Court is the Defendants' motion to dismiss. (Doc. 78.) Defendants argue plaintiff has failed to prosecute her case and to comply with the discovery schedule. Hitzig opposes the motion. (Doc. 81.) For the reasons set forth below, the motion to dismiss is denied without prejudice.

This case has been pending for over three years and discovery is not yet complete. The Court recently denied Hitzig's motion to quash and for a protective order regarding a deposition of Hitzig, and warned that if she continued to disregard deposition notices, her action could be dismissed.

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<sup>1</sup> For a more detailed factual and procedural account, see Docs. 11, 16, 68.

(Doc. 83.) Defendants were ordered to confer with Hitzig and notice a deposition to be conducted prior to November 30. Id. Hitzig was ordered to attend such a properly noticed deposition, or risk dismissal of her case. Id. The Court notes a discovery certificate for a Notice of Deposition of Kathryn Hitzig was filed November 16. (Doc. 85.)

Accordingly, the Court again warns Hitzig that if she does not attend her deposition, she risks dismissal of her case. See Doc. 83; Fed. R. Civ. P. 37(b)(2); Agiwal v. Mid Island Mortg. Corp., 555 F.3d 298, 302 (2d Cir. 2009). In addition to attending her deposition, Hitzig is ordered to submit expert witness reports, if any, and properly respond to Defendants' requests for production by December 16, 2011. Hitzig is warned that failure to participate in discovery and to comply with the December 16 deadline may result in dismissal of her case. The Court denies Defendants' motion to dismiss (Doc. 78) without prejudice to renew should Hitzig fail to attend her deposition or otherwise participate in discovery as ordered.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 28<sup>th</sup> day of November, 2011.

/s/ J. Garvan Murtha  
Honorable J. Garvan Murtha  
United States District Judge